

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TRAVELERS CASUALTY AND SURETY	:	CIVIL ACTION NO.
COMPANY f/k/a THE AETNA CASUALTY AND	:	3:12-CV-01701
SURETY COMPANY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
EXCALIBUR REINSURANCE CORPORATION	:	
f/k/a PMA CAPITAL INSURANCE COMPANY,	:	
	:	
Defendant.	:	DECEMBER 3, 2012

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action for breach of contract and account stated. The Plaintiff, Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers Casualty”), entered into three reinsurance contracts with Excalibur Reinsurance Corporation f/k/a PMA Capital Insurance Company (“Excalibur”). The contracts reinsured a policy that Travelers Casualty had issued to Zurn Industries, Inc. (“Zurn”). Travelers Casualty made payments to or on behalf of Zurn, and then submitted corresponding reinsurance claims to Excalibur. Excalibur has wrongfully refused to pay those claims. In Count One of this Complaint, Travelers Casualty seeks a judgment that Excalibur breached the reinsurance contracts through this wrongful refusal.

Moreover, Excalibur has never questioned or objected to Travelers Casualty’s claims, even though some of those claims were submitted over a year ago. Indeed, Excalibur not only has failed to object to Travelers Casualty’s claims; it has paid many similar claims in the past without objection. Excalibur has also told a reinsurance intermediary that some of Travelers

Casualty's claims have been "approved for payment," yet Excalibur still has not paid. Travelers Casualty therefore seeks judgment on an account stated cause of action in Count Two of this Complaint.

Travelers Casualty seeks an award of compensatory damages, along with awards of pre- and post-judgment interest and taxable costs.

II. THE PARTIES, JURISDICTION AND VENUE

2. Travelers Casualty is a corporation organized under the laws of the State of Connecticut.

3. Travelers Casualty's principal place of business is in Hartford, Connecticut.

4. Travelers Casualty was formerly known as The Aetna Casualty and Surety Company ("Aetna"). Throughout this Complaint, the term "Travelers Casualty" will refer to Travelers Casualty, Aetna or both, as context requires.

5. Excalibur is a corporation organized under the laws of the Commonwealth of Pennsylvania.

6. Excalibur's principal place of business is in Philadelphia, Pennsylvania.

7. Excalibur was formerly known as PMA Capital Insurance Company ("PMA Capital"). Throughout this Complaint, the term "Excalibur" will refer to Excalibur, PMA Capital or both, as context requires.

8. At the time it entered into the reinsurance contracts that are the subject of this action, Excalibur held a license from the Connecticut Department of Insurance to conduct an insurance and/or reinsurance business within the State of Connecticut.

9. Since at least 2003, Excalibur has been a “runoff” reinsurer, meaning that it does not seek or write new reinsurance business but instead focuses on “running off” its old reinsurance business.

10. Excalibur voluntarily surrendered the license referenced in Paragraph 8.

11. Excalibur presently holds no license to conduct an insurance or reinsurance business in the State of Connecticut.

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The action is between citizens of different states, and the amount in controversy exceeds \$75,000.00 excluding interest and costs.

13. This action arises out contracts made or to be performed in the State of Connecticut. This Court therefore has personal jurisdiction over Excalibur by virtue of Section 33-929 of the Connecticut General Statutes.

14. This action arises out of contracts that Excalibur freely entered into with Travelers Casualty, a Connecticut corporation. In entering into such contracts, Excalibur purposefully availed itself of the benefits and privileges of doing business in the State of Connecticut.

15. This District is a proper venue for this action. Excalibur is a corporation that is subject to personal jurisdiction in this District, and therefore pursuant to 28 U.S.C. § 1391(c)(2) it resides in this District for purposes of venue.

III. ZURN’S INSURANCE CLAIMS

16. Travelers Casualty issued an umbrella insurance policy to Zurn for the period April 1, 1983 to April 1, 1985 (the “Zurn Policy”). The Zurn Policy bore policy number 003 XS 1790 SCA.

17. A number of individuals asserted claims against Zurn, alleging that they had been injured by exposure to asbestos-containing products that were designed, manufactured and/or sold by Zurn (the “Asbestos Claims”).

18. Zurn sought coverage for the Asbestos Claims from Travelers Casualty under the Zurn Policy.

19. In 2002, Zurn sued Travelers Casualty in the United States District Court for the Western District of Pennsylvania.

20. In 2003, Zurn and Travelers Casualty resolved their coverage disputes and lawsuit by means of a confidential settlement agreement and companion cost sharing agreement (the “Zurn Settlement”).

21. The Zurn Settlement contemplated that Travelers Casualty would make future payments to or on behalf of Zurn from time to time under the Zurn Policy.

22. After it entered into the settlement agreement and cost sharing agreement in 2003, Travelers Casualty did in fact make periodic payments to or on behalf of Zurn under the Zurn Policy.

IV. TRAVELERS CASUALTY’S REINSURANCE CLAIMS

23. Reinsurance has been described as “insurance for insurance companies.” In a reinsurance transaction, one insurance company – called the “cedent” – pays a premium to obtain a promise from another insurance company – the “reinsurer” – to reimburse it for some portion of the losses that it sustains under a policy or policies of insurance.

24. Reinsurance contracts come in two general types. A “facultative” reinsurance contract is a reinsurance contract that reinsures a single policy or risk. A “treaty” reinsurance contract, by contrast, is a reinsurance contract that reinsures a group of policies or a book of

business. Facultative reinsurance contracts are known as “certificates” and treaty reinsurance contracts are known as “treaties.”

25. Travelers Casualty purchased certificates of facultative reinsurance, reinsuring the Zurn Policy for the period April 1, 1984 to April 1, 1985.

26. Through its participation in the Johnson & Higgins Willis Faber Syndicate A at the New York Insurance Exchange, Excalibur subscribed to three of the facultative certificates referenced in Paragraph 25. More specifically, Excalibur subscribed to certificate numbers A33566/84A, A35169/84A and A35168/84A (together, the “Zurn Facultative Certificates”).

27. In the Zurn Facultative Certificates, Excalibur promised to pay Travelers Casualty’s reinsurance claims promptly.

28. In the Zurn Facultative Certificates, Excalibur agreed to follow Travelers Casualty’s fortunes, and not to attempt to avoid payment by second-guessing Travelers Casualty’s claims decisions. More specifically, Excalibur agreed that its “liability . . . shall follow that of [Travelers Casualty].”

29. At various times after the Zurn Settlement and before 2011, Travelers Casualty submitted reinsurance billings to Excalibur under the Zurn Facultative Certificates, which billings arose out of the periodic payments that Travelers Casualty made to or on behalf of Zurn with respect to the April 1, 1984 – April 1, 1985 period of the Zurn Policy.

30. Excalibur paid all of the reinsurance billings referenced in Paragraph 29.

31. On December 1, 2011, Travelers Casualty submitted reinsurance billings to Excalibur under the Zurn Facultative Certificates, which billings arose out of further payments that Travelers Casualty had made to or on behalf of Zurn with respect to the April 1, 1984 – April 1, 1985 period of the Zurn Policy (the “December 2011 Billings”). The December 2011

Billings were submitted by a reinsurance intermediary, Guy Carpenter & Co., to Excalibur's agent, Armour Risk Management Inc. ("Armour").

32. Excalibur received the December 2011 Billings in December, 2011.

33. The December 2011 Billings totaled \$243,165.06.

34. Excalibur did not pay the December 2011 Billings "promptly," as it was required to do under the Zurn Facultative Certificates.

35. Excalibur has not paid the December 2011 Billings as of the date of this Complaint.

36. Excalibur has not questioned or objected to the December 2011 Billings as of the date of this Complaint.

37. Indeed, representatives of Excalibur have stated to Travelers Casualty (through a reinsurance intermediary) that Excalibur has approved the December 2011 Billings for payment. Still, Excalibur has not paid the December 2011 Billings.

38. On September 18, 2012 Travelers Casualty submitted reinsurance billings to Excalibur under the Zurn Facultative Certificates, which billings arose out of further payments that Travelers Casualty had made to or on behalf of Zurn with respect to the April 1, 1984 – April 1, 1985 period of the Zurn Policy (the "September 2012 Billings"). The September 2012 Billings were submitted by Guy Carpenter & Co. to Armour.

39. Excalibur received the September 2012 Billings in September, 2012.

40. The September 2012 Billings totaled \$208,644.60.

41. Excalibur did not pay the September 2012 Billings "promptly," as it was required to do under the Zurn Facultative Certificates.

42. Excalibur has not paid the September 2012 Billings as of the date of this Complaint.

FIRST COUNT – Breach of Contract

43. Travelers Casualty realleges all of the allegations of Paragraphs 1 through 42 as if fully set forth herein.

44. Travelers Casualty has performed all of the obligations required of it under the Zurn Facultative Certificates, including but not limited to the payment of premium.

45. Excalibur has failed and/or refused to pay the December 2011 Billings and the September 2012 Billings.

46. Excalibur's failure and/or refusal to pay the December 2011 Billings and the September 2012 Billings, or either of them, constitutes a breach of the Zurn Facultative Certificates.

47. Travelers Casualty has been damaged by Excalibur's aforementioned breach of the Zurn Facultative Certificates in the amount of \$451,809.66, exclusive of interest and costs.

SECOND COUNT – Account Stated

48. Travelers Casualty realleges all of the allegations of Paragraphs 1 through 42 as if fully set forth herein.

49. The December 2011 Billings constituted a statement of the amount that Excalibur then owed Travelers Casualty under the Zurn Facultative Certificates.

50. The September 2012 Billings constituted a statement of an additional amount that Excalibur then owed Travelers Casualty under the Zurn Facultative Certificates.

51. As of the date of this Complaint, Excalibur has not questioned or objected to the December 2011 Billings.

52. As of the date of this Complaint, Excalibur has not questioned or objected to the September 2012 Billings.

53. Excalibur did not question or object to the December 2011 Billings within a reasonable time.

54. Excalibur did not question or object to the September 2012 Billings within a reasonable time.

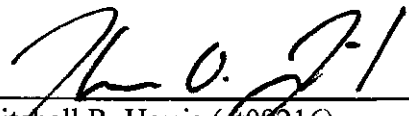
55. The December 2011 Billings constitute an account stated in the amount of \$243,165.09, exclusive of interest and costs.

56. The September 2012 Billings constitute an account stated in the amount of \$208,644.59, exclusive of interest and costs.

WHEREFORE, Travelers Casualty respectfully prays for judgment against Excalibur as follows:

- i) a judgment that Excalibur has breached the Zurn Facultative Certificates;
- ii) an award of compensatory damages in the amount of \$451,809.66, together with pre- and post-judgment interest, including interest pursuant to Section 37-3a of the Connecticut General Statutes;
- iii) the costs associated with this action; and
- iv) such other relief as the Court may deem just and proper.

TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a THE AETNA CASUALTY
AND SURETY COMPANY, Plaintiff,

By  _____

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